(3) *Simmons v. Pennington* (1955) 1 All E.R. 240.

ACTION for Specific Performance.

K. A. Seth for the plaintiffs.

John Laycock for the defendants.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — This was an action for specific performance. The defendants on October 9th 1952 entered into a contract to purchase certain land in Katong, they having been the highest bidders in an auction and thereafter having signed the usual memorandum and paid a deposit.

The defendants resist this claim owing to the following circumstances. Many years before the then owner of this and other land in the neighbourhood had submitted to the authorities a plan for development as the result of which the land in question is shown on the general improvement plan as an open space under section 50(1)(g) of Cap. 134. As a consequence of this, by virtue of section 58(1) of the same Ordinance, it is not possible to use the land otherwise than as an open space without the permission of the Board.

The plaintiffs were fully aware of this state of affairs as they had themselves sought to develop the land a short time before and had failed to obtain permission. There was no disclosure by the plaintiffs at the time of the sale. Further before the sale the land was advertised as valuable freehold land. The managing director of the defendant Compnny was induced to go to the sale by one of these advertisements. No actual knowledge of this restriction can be imputed to the defendants, and the plaintiffs or their agents must have been aware of this as the price realised at the auction was greatly in excess of what might be expected of anyone with knowledge.

If this had been an ordinary case of a restriction imposed by a covenant or of an easement the answer would have been simple. There would have been a duty to disclose and, unless the contract provided otherwise, the restriction would have constituted a defect of title and thus have afforded a defence to the purchaser and given him a right to the return of the deposit. This would have constituted a good defence both in law and in equity (see *Flight v. Booth*[1], *Dykes v. Blake*[2]). In this case the conditions of sale would not have protected the vendors. Conditions of sale of a general character cannot be used to cover up a known and serious defect of title which is not disclosed. In any event there is, in the present case, no "scheme" within the meaning of the Ordinance.

In the present case the position is different in that the restriction could have been discovered by examination of the relevant plan which is open to public examination. As in fact there was no examination of the plan on behalf of the defendant Company and as the plaintiffs must, when they put the land up for auction, have relied on the probability that an intending purchaser would not examine the plan, I do not consider that this helps the plaintiffs; see again *Dykes v. Blake*[2]; see also the unreported case referred to in *Simmons v. Pennington*[3]. I think that in the circumstances the defendants are entitled to judgment on the claim and counterclaim.

I should also have held that the description "valuable freehold land" was, in the circumstances of the present case, a misrepresentation entitling the purchasers to rescind.

Judgment for the defendants on claim.

Judgment for the defendants on counterclaim for $10,482.50 with costs.

Judgment for the defendants

Solicitors: *Sisson & Delay; Laycock & Ong.*

SARAH CASHIN v. GOH KAH SENG

[O. C. J. (Whitton J.) March 4, 1955]

[Singapore — Suit No. 689 of 1954]

Landlord and Tenant — Control of Rent Ordinance, 1953, s. 15(1)(h) — Whether tenant has knowingly committed a breach of a provision of the Municipal Ordinance affecting the premises which exposes the landlord to a penalty — Municipal Ordinance (Cap. 133).

The plaintiff in this case was the Executrix of the estate of A. W. Cashin, deceased. She claimed, as landlord, possession of premises of which the defendant was the tenant. It appeared that the defendant had (a) erected board partitions for the purpose of forming cubicles without the consent in writing of the Commissioners, and (b) commenced building operations without proper notice to the Commissioners.

Held: (1) before a tenant is deprived of the protection afforded by s. 14 of the Control of Rent Ordinance under the provisions of s. 15(1)(h) thereof not only must he have committed a breach which exposes his landlord to penalty, fine or forfeiture but also he must have known that he was committing a breach at the time of doing so; (2) in this case the two breaches committed by the defendant did expose the plaintiff to a penalty or a fine and as the defendant knew that he was committing the breaches at the time of doing so s. 15(1)(h) of the Control of Rent Ordinance was applicable.

[Editorial Note: Section 15(1)(h) of the Control of Rent Ordinance 1953 reads: "Where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises

which exposes the landlord to any penalty, fine or forfeiture;".]

Case referred to:—

(1) *Chung Lai Heng v. Murugappa Chettiar* (1952) M.L.J. 232; (1952) M.L.R. 71.

CLAIM for possession.

H. G. Hanbury Sparrow for the plaintiff.

R. K. Booker for defendant.

Cur. Adv. Vult

Whitton J.: — In this case the plaintiff as landlord claims possession of premises known as 51 Upper Cross Street from the defendant who is the tenant. The plaintiff contends she is not precluded by the Control of Rent Ordinance, 1953, from recovering possession since this is a case to which, she asserts, Section 15(1)(h) of the Ordinance applies.

There is little dispute as to the facts, and I am satisfied by the unrebutted evidence for the plaintiff that the defendant in 1953 carried out certain structural alterations to the premises, and did so in such circumstances that he committed breaches of the provisions of Section 144(7) and 166(1) of the Municipal Ordinance (Cap. 133). I am also satisfied, particularly in view of the evidence of the witness Mr. Neo Chye Teck, that the defendant was aware when he was carrying out the alterations that he was contravening the Ordinance.

The main difficulties in the case arise in interpreting Section 15(1)(h) of the Control of Rent Ordinance. In this connection the first point is to determine the meaning and scope of the word "knowingly". It is noteworthy that this word did not appear in the corresponding section — 14(1)(k) — of the earlier (1947) Control of Rent Ordinance. It seems safe to conclude, therefore, that when they added it the Legislature considered it desirable to give the tenant added protection by requiring proof of the existence of particular knowledge on his part before the section might operate against him, but what this knowledge was to be is perhaps not so certain. In *Chung Lai Heng (m.w.) v. Murugappa Chettiar*[1] Brown J. said of section 14 of the 1947 Ordinance:—

> "I think that the true construction is that not every breach of the Municipal Ordinance on the part of a tenant will deprive him of the protection afforded by Section 14. He is only to be deprived of that protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine or forfeiture".

This is, in my opinion, the correct construction, and if it is accepted the effect of adding the word "knowingly" appears to be that before a tenant is deprived of this protection not only must he have committed a breach which exposes his landlord but also he must have known that he was committing a breach at the time of doing so. It was suggested for the defence that the knowledge of the tenant must extend further and that he must know the breach to be one which would expose the landlord to penalty, fine or forfeiture. I am unable to agree with this view. It seems to me the words "which expose etc." simply limit the class of breaches to which the sub-section applies. It is also unlikely, in my view, that it was intended to exempt from the provisions of the section tenants who with knowledge that they were committing breaches contravened the Municipal Ordinance in such a manner as to expose the landlord but against whom such an uncertain factor as knowledge that the landlord would be so exposed could not be established. On the other hand it may well have appeared to the legislature that it was desirable to afford protection to the tenant who might offend unwittingly.

The next question for consideration is the meaning of the word "exposes". Mr. Booker informed me in course of his able argument that he had been unable to find any legal definition of the word in either local or English cases. The *Oxford Dictionary* gives as one meaning "to lay open (to danger, ridicule etc.)", and I think that is the sense in which the word is used in the section. As to the precise time when a contravention of the Municipal Ordinance lays a landlord open to penalty, fine or forfeiture I have after considerable reflection reached the opinion that it occurs at that point a state of affairs commences to exist on and in relation to the premises which if deposed to on information to a Magistrate would cause the latter to issue process against the landlord on the ground that a *prima facie* case of an offence by the landlord had been disclosed. It transpired in the course of the hearing that no prosecution is in fact instituted by a Municipal Building Inspector until the direction of the City Council has been obtained, and by reason of this Mr. Booker suggested that a landlord was not exposed until such direction had been given, but it seems to me, once there is a liability to prosecution, the circumstance that in theory at least the City Council might not eventually authorise one does not alter the position. In support of his contention Mr. Booker pointed out that the words of the section are "which exposes", not "which may expose". I think, however, the effect of the words actually used is that a definite breach of the Municipal Ordinance which exposes the landlord must be established before the sub-section can operate; it would not be enough to show there was a breach which might render the landlord liable.

I now have to decide whether the plaintiff in this case was exposed to penalty of fine or forfeiture. The first breach of the tenant, that under Section 166(1)

(Cap. 133), appears to have been committed shortly before 4th December 1953 in view of the admission on the point by the defendant to which Mr. Cashin, whose evidence I accept, testified. This breach, to put the matter shortly, was the erection of board partitions for the purpose of forming cubicles without the consent in writing of the Commissioners. There was some evidence that a plan in respect of the premises had been submitted and approved in 1939, but, apart from the point whether such approval could still have validity in 1953, there is no evidence before the Court that what the defendant erected was in accordance with whatever had been approved in 1939. Now Section 166(2) reads:—

"In every such case the owner of the premises shall be deemed to have permitted such erection until the contrary is proved",

and, having regard to the wording of Section 166(1), the owner, if the contrary is not proved, is clearly liable to the prescribed penalty of fine. It was contended for the defence that it had not been proved the plaintiff was the owner of the premises, but, while it is true this was not stated in so many words, I feel satisfied in view of Mr. Cashin's evidence, and particularly since no cross-examination was directed to the point, that the plaintiff was and is the owner. In any event the plaintiff would appear to be covered by the definition of "owner" in Section 3 of the Municipal Ordinance. In the light then of the construction of Section 15(h) I have favoured it follows that once the defendant had erected the unauthorised partitions the plaintiff was in the position of being deemed to have permitted the erection and so was exposed to prosecution. It is I think true to say that in the course of events the case took the plaintiff never was in any serious danger of finding herself in the City Magistrate's Court, but that does not, I think, alter the fact that the defendant's breach did expose her to prosecution. It was apparently Mr. Cashin himself who first noticed the breach when he was doing a routine inspection of the premises, and he brought it to the notice of the City Architect. It is conceivable that had the City Architect's department discovered the breach before Mr. Cashin that the case might have had a different history.

The second breach of the tenant—that under Section 144(7)—was the commencement of building operations without proper notice to the Commissioners. Section 144(12) reads:—

"Where any building operations are commenced or carried out in respect of any building, they shall be deemed to have been commenced or carried out by the owner of the land where such building is erected and he shall be deemed liable therefor."

This provision read in conjunction with Section 144(7) may bring an owner within the scope of the penalty clause. It seems to me, therefore, that when the defendant commenced to erect the partitions and the other work described in his evidence by Mr. Francis Chan Mun Cheok, without having given the required notice to the Commissioners, he rendered the plaintiff liable to prosecution.

I hold then, by reason of these two breaches and of the defendant's knowledge in the matter, this is a case within Section 15(1)(h) of the Control of Rent Ordinance, 1953. It is not disputed that the defendant's tenancy was duly determined by notice to quit dated 17th February 1954. It is not suggested that once a case under Section 15 has been established the Court retains any discretion as to the application of the section, and I would add, that even if it had, this does not seem to me a Suit in which there is any ground of merit for a Court declining to apply the Section. Under Section 18, however, I propose to give the defendant until May 1st next to surrender possession. Accordingly I hold that the plaintiff's claim for possession of the premises must succeed, as does also her claim for *mesne* profits from 1st April 1954 until the date of judgment or until possession is given at the rate of $125 per month. The plaintiff is also entitled to the costs of this Suit.

Judgment accordingly.

Solicitors: *Drew & Napier; Allen & Gledhill.*

CHEE CHOONG WAH v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) March 16, 1955]

[Singapore—Magistrate's Appeal No. 214 of 1954]

Extradition—Fugitive Offenders Act, 1881—Straits Settlements and Protected States Fugitive Offenders Order in Council, 1916—Legal position of fugitive offender in view of the Federation of Malaya Order in Council, 1948—Authentication of Warrant by British Adviser.

This appeal relates to proceedings under Part II of the Fugitive Offenders Act, 1881. A Warrant of Arrest had been issued by the Magistrate in Kuantan, Pahang, to arrest the appellant in Singapore and transfer him to Kuantan, on a cheating charge. The warrant purported to be authenticated by the British Adviser, Pahang. The appellant was subsequently arrested and brought before a Magistrate in Singapore who made an order that the appellant be released on bail in the sum of $2,000 with one surety, to appear before the Magistrate's Court in Kuantan within two months from the date of the final disposition of the case. Against that order the appellant appealed.

Held: although the learned Magistrate could take judicial notice of the Straits Settlements and Protected States Fugitive Offender Order in Council, 1916, he could not take judicial notice of the Federation of Malaya Order in Council, 1948, as the latter Order did not have the force of law in the Colony.

Held further: the British Adviser, Pahang, could not authenticate the Warrant of Arrest.